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No. 83-6381

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IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1984

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GILL PARKER, *et al.*,  
*Petitioners,*

JOHN R. BLOCK, Secretary of the  
UNITED STATES DEPARTMENT OF AGRICULTURE  
and

CHARLES ATKINS, Commissioner of the  
MASSACHUSETTS DEPARTMENT OF  
PUBLIC WELFARE,  
*Respondents.*

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ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE FIRST CIRCUIT

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**BRIEF FOR THE NATIONAL ANTI-HUNGER  
COALITION AS AMICUS CURIAE  
IN SUPPORT OF PETITIONERS**

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CYNTHIA G. SCHNEIDER  
Food Research and Action Center, Inc.  
1319 F Street, N.W., Suite 500  
Washington, DC 20004  
(202) 393-5060

*Attorney for National Anti-Hunger  
Coalition*

August 31, 1984

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**INTEREST OF AMICUS CURIAE**

The National Anti-Hunger Coalition (NAHC) respectfully submits this brief pursuant to Rule 36(2) of this Court, upon consent of all parties, in support of the position of the petitioners, Gill Parker, *et al.*

NAHC is a membership organization consisting of individuals and local, state, regional and national organizations. Most of the members of NAHC's low-income organizations are eligible for and participate in federal feeding programs for low-income persons, which include the Food Stamp Program. Most of NAHC's members are minorities and many are women. NAHC's major objectives are to reduce hunger and malnutrition in this country both by ensuring the involvement of the poor in the development of policies and programs which affect their lives and by ensuring the correct provision of federal food program benefits to all those eligible for such assistance. To achieve the latter objective, many NAHC members conduct workshops for low-income persons at which they describe eligibility conditions, participants' rights, and participants' as well as agencies' responsibilities in the operation of the federal food programs.

NAHC believes that even knowledgeable Food Stamp Program participants can only assess the correctness of an action taken on their Food Stamp Program grant through an unambiguous, understandable, and detailed notice containing case specific information. Accordingly, NAHC believes a reversal of the decision below, as defendants urge, undermines their ability to ensure receipt of the correct amount of food stamp benefits as well as the integrity of the Food Stamp Program itself, which guarantees benefits to all those meeting program eligibility conditions. Thus, NAHC has a substantial interest in the outcome of this case.

Our aim is to assist the Court in understanding the overall context in which this case arises by discussing certain considerations not raised below. Most significant is the fact that states can (and do) underissue Food Stamp



Program benefits with impunity. Unlike benefit overissuances where states suffer a financial penalty if their overissuance level exceeds statutorily determined targets, states suffer no financial penalty for underissuances or incorrect denials and terminations. The focus of the sanction system is to prevent overissuances not underissuances. Thus, Food Stamp Program participants must police the correctness of their benefit level themselves. In the context of an extremely complicated program this can only be done through detailed notices of changes in their benefit allotment. For this reason, the decision below finding that plaintiffs are entitled to meaningful advance notice should be affirmed.

### **SUMMARY OF ARGUMENT**

Since 1977 the Food Stamp Act has been amended six times adding additional layers of complexity to an already complicated Program. This complexity makes it more difficult for Program participants to understand Food Stamp Program procedures and makes it more probable that Food Stamp Program administrators will make errors in determining benefits. To protect the Program from the unnecessary expenditure of Program funds through overissued benefits, Congress has imposed upon states financial penalties for excessive overissuance errors. States are not penalized for underissuance errors.

As Program administrators take action to prevent overissuances, Program participants have less opportunity to obtain information about Program procedures. The elimination of food stamp outreach activities, the elimination or reduction in funding for private groups assisting Food Stamp Program participants, and the reduction in Food Stamp Program eligibility staff available to serve clients,



all make it extremely difficult for households to obtain information in order to assess the accuracy of their benefit level. The main protection Food Stamp Program participants have against the underissuance of benefits is the provision of unambiguous, understandable, and detailed notices containing case specific information when changes occur in their benefit levels. These notices offer Program participants the most meaningful opportunity to assess the accuracy of their benefits and to assess the need to exercise their right to a hearing challenging their benefit levels.

## **ARGUMENT**

### **THE MAIN PROTECTION FOOD STAMP PROGRAM PARTICIPANTS HAVE AGAINST THE UNDERISSUANCE OF FOOD STAMP BENEFITS IS MEANINGFUL NOTICE OF CHANGES IN BENEFIT LEVELS.**

#### **1. Food Stamp Program eligibility and benefit determination procedures are complex.**

While the basic concept of Food Stamp Program entitlement and benefit determinations are fairly simple to understand — that is, once the household meets certain non-financial and financial eligibility conditions, their benefits will be based on household size and income after certain deductions are taken — the actual determination of eligibility and benefits is quite complex. Federal regulations covering the Food Stamp Program certification procedures cover 138 pages in the *Code of Federal Regulations*. Many of these regulations further allow states to establish additional policies and procedures in a particular area. For example, federal rules require food stamp applicants to verify up to eight items affecting eligibility and allotment levels. States may elect to mandate verification of any other factors. 7 C.F.R. §273.2(f)(3).

Even when states do not have discretion to establish additional policies, the federal rules are complicated. Food stamp households receive a deduction for their shelter costs which exceed their adjusted net income by fifty percent. 7 U.S.C. §2014(e)(2). But for non-elderly and disabled households this deduction cannot exceed \$125.00 when used alone or in combination with a deduction allowed for the cost of caring for a dependent person if the care is needed so that a household member can work, seek work, or obtain job training. Shelter costs include continuing charges for the shelter occupied by the household, property taxes and insurance on the structure itself, utility charges, and unreimbursed charges for the repair of the home substantially damaged by a natural disaster. There are special rules on budgeting a household's utility charges. Households may elect to use a state-developed standard utility allowance or use actual utility charges. 7 C.F.R. §273.9(d)(6). The rule, though, limits how often a household can switch between the standard and actual costs. Moreover, there are other rules as to when shelter costs will be allowed as a deduction. 7 C.F.R. §273.10(d). Then there are still other rules, in another section of the Code, as to how to compute the shelter deduction when the household consists of someone not eligible for food stamp benefits. 7 C.F.R. §273.11(c)(1)(i); (c)(2)(iii); (d).

In 1977, when Congress rewrote the Food Stamp Act, Congress hoped to simplify program administration mainly by limiting and standardizing the number and amount of itemized deductions allowed households. H.R. Rep. No. 464, 95th Cong., 1st Sess. 2, 5, *reprinted in* 1977 U.S. Code Cong. and Ad. News 1978, 1982. The 1977 legislative objective to simplify Program administration has been slowly and steadily eroded since then. Congress was al-

ready amending the Act in 1979, the same year that states were first implementing the regulations promulgated under the 1977 Food Stamp Act.<sup>1</sup> Since 1979 the Food Stamp Act has been amended five times.<sup>2</sup> For both participants and program administrators alike each amendment added another level of confusion and complexity to an already complex set of Program eligibility and benefit determination rules.

In addition to making the Program more complex through various statutory amendments reducing income eligibility levels, changing the amounts of the deductions, limiting eligibility for certain households, changing the way in which both the initial month's and ongoing months' benefits are calculated, and redefining certain types of excluded income, the Congress in 1981 eliminated food stamp outreach.<sup>3</sup> Prior to 1981, states were required to perform outreach activities, which included informing low-income households of the availability of the Food Stamp Program and its eligibility requirements and benefits. 7 C.F.R. §272.6 (b)(3)(1981). States were required to provide this information. *Id.* Moreover, during the implementation of the 1977 Food Stamp Act, states were required to provide to low-income persons "clearly written information, such as brochures or pamphlets, that describe basic financial and nonfinancial eligibility criteria, . . . , the application process and participant rights and responsibilities." 7 C.F.R. §272.6(f)(1)(ii) (1981).

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<sup>1</sup>See 7 C.F.R. §272.1(g)(1); Pub. L. No. 96-58, 93 Stat. 389 (1979).

<sup>2</sup>Pub. L. No. 96-249, 94 Stat. 357 (1980); Pub. L. No. 97-35, §§101-117, 95 Stat. 358 (1981); Pub. L. No. 97-98, §§1301-1338, 95 Stat. 1282 (1981); Pub. L. No. 97-253, §§140-193, 96 Stat. 772 (1982); Pub. L. No. 98-204, 97 Stat. 1385 (1983).

<sup>3</sup>Pub. L. No. 97-35, §111, 95 Stat. 362 (1981).

Current federal regulations only require state agencies to "inform participant and applicant households of their Program rights and responsibilities." 7 C.F.R. §272.5(b)(2). The regulations allow states to decide how this information will be provided. Since 1981 two other factors have made it more difficult for food stamp participants to assess the accuracy of their benefits. Many private organizations, such as Community Action Programs, legal services offices, and anti-hunger groups used to receive federal funding to assist food stamp participants in understanding Food Stamp Program procedures. In 1981 Congress either eliminated<sup>4</sup> or greatly reduced<sup>5</sup> the amount of federal funding used in part to support these Food Stamp Program informational efforts. At the same time because of a declining economy, states which must pay at least 50 percent of the cost of administering the Food Stamp Program, were forced to reduce social services staff.<sup>6</sup> Consequently, while Food Stamp Program par-

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<sup>4</sup>In 1981 Congress repealed the Economic Opportunity Act of 1964. Pub. L. No. 97-35, §683, 95 Stat. 519 (1981). This 1964 Act, as amended, funded the Community Food and Nutrition Program which provided \$28 million to Community Action Programs and anti-hunger organizations to conduct, *inter alia*, food stamp related outreach activities.

<sup>5</sup>Federal funding for civil legal services programs for the poor was reduced from \$321 million in fiscal year 1981 to \$241 million in fiscal year 1983. This resulted in the number of legal services attorneys being reduced from 6,559 in 1980 to 4,766 in 1983 and the number of paralegals being reduced from 2,901 in 1980 to 1,949 in 1983. Legal Services Corporation, "Fact Book," Washington, D.C., May 1984, p. 22.

<sup>6</sup>For example, a 1983 study prepared by Chicago-based community organizations reports:

Staff layoffs by the Illinois Department of Public Aid . . . have adversely affected the department's ability to deliver

(continued)

ticipants seeking information about their benefits logically turn to their food stamp eligibility worker, they often find that those workers are extremely and increasingly inaccessible.<sup>7</sup> The reality of Food Stamp Program administration today is that unless a household requests specific information relating to its benefits during their initial eligibility interview or at recertification, or is fortunate enough to have access to an individual or group knowledgeable about the Food Stamp Program, food stamp participants have very little opportunity to obtain information needed to monitor the accuracy of their benefits.

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*(footnote continued)*

benefits to recipients. Average caseload at IDPA is 450-600 clients. However, because of the State's hiring freeze and a series of layoffs in the last 18 months, many caseloads are uncovered. Cases may be temporarily assigned to other workers in the unit or the caseload may remain uncovered until a client demands service through the department's appeal process. Food Justice Programs recently talked to one worker who was handling over 900 cases: 600 of her own as well as 150 from two other workers. "Chicago Hunger Watch Report 1983," Chicago, 1983, p. 59.

Similar staff layoffs were reported in Los Angeles County which resulted in Food Stamp Program applicants being told to seek assistance in completing the application form from local churches or community centers. *The Daily Report* (Ontario, California), August 27, 1983, at 9, col. 4.

See also, American Federation of State, County and Municipal Employees, "The States, the People, and the Reagan Years: An Analysis of Social Spending Cuts," Washington, D.C., April, 1984, pp. 6-7, for a general description of the effects of the 1981 federal spending reductions on state and local governments.

<sup>7</sup>See note 6; see too Citizens' Commission on Hunger in New England and Harvard University School of Public Health, "American Hunger Crisis: Poverty and Health in New England," Boston, 1984,

*(continued)*



However, when a change in their benefits occurs, food stamp households are given their first opportunity to assess the accuracy of their grant and the need to exercise their right to a hearing to challenge the benefit level. While federal regulations require states to inform households of their right to a fair hearing to contest the change, this right is meaningless unless the household has the information to assess whether or not they need a hearing. The First Circuit recognized that plaintiffs herein "may have been well informed about their right of appeal, but they did not have enough information to know whether or not to exercise that right." *Foggs v. Block*, 722 F.2d 933, 939 (1st Cir. 1983). In order for Food Stamp Program participants to assess whether to invoke their right to appeal, they must be provided with unambiguous, understandable, and detailed notices containing case specific information when a change in their coupon allotments occurs.

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*(footnote continued)*

pp. 72-75, which describes practices in the administration of public benefit programs designed to perpetuate hardship. The Harvard report relates a management practice reflective of the welfare agency's bias "to be overly scrupulous in granting assistance — but not in denying it."

One such practice is that of work management wherein workers have no regular clients. In this impersonalized system workers are assigned duty periods and handle any cases that come in during that time. They are evaluated without regard to the quality of services they perform, so they have little incentive to act out of compassion in helping the client obtain needed assistance. Under this rotating, impersonal system, messages, papers and documents frequently are lost and the client gets terminated from assistance for failing to "meet requirements." *Id.* at 73.

While this practice is presented as a description of the Aid to Families with Dependent Children system, the report notes that "[t]he practices followed in AFDC exist in other federal programs . . . ." *Id.* at 74.

## **2. The complexity of the Food Stamp Program results in issuance errors.**

By simplifying Program administration through the 1977 statutory revisions, Congress hoped to reduce Program error. H.R. Rep. No. 464, 95th Cong., 1st Sess. 2, 5, *reprinted in* 1977 U.S. Code Cong. and Ad. News 1978, 1982. The achievement of this goal, however, has been greatly frustrated since 1977 by continual amendments to the Food Stamp Act. This fact has been recognized by Food Stamp Program administrators, eligibility workers and members of Congress.

Each amendment places additional burdens on state and local food stamp administrators and eligibility workers. Once federal regulations are published, implementing the statutory changes, states have to translate those regulations into state-wide procedures, computers have to be reprogrammed, manuals written, forms revised, eligibility workers trained and (where appropriate) food stamp benefits reduced. One of the 1981 amendments required states to implement new reporting and budgeting procedures for some households.<sup>8</sup> Under these procedures, households must submit monthly a form reporting the previous month's income and other household circumstances. Food stamp benefits will be issued in the following month based on the information reported on the monthly report form. This new reporting and budgeting procedure greatly increased workload and flow of paper in local food stamp offices.

A recent report on the trials and tribulations of a Food Stamp Program supervisor for the Essex County, New Jersey food stamp office is probably typical of the

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<sup>8</sup>Pub. L. No. 97-35, §107-108, 95 Stat. 360-361 (1981); Pub. L. No. 98-107, §101(b), 97 Stat. 735 (1983).



difficulties facing most food stamp workers:

Mrs. Dyson . . . says that the extra paper work prevents her from rechecking her caseworker's benefit calculations before signing them. Are mistakes being made? "Of course," she says, "You can't keep up with all this stuff."

She pulls out a four-inch stack of memos detailing recent rule changes. "You get so many memos, you stop reading them," she says. "About half the stuff they say, we don't know what they're talking about." All day long, her phone jangles with irate calls, while her subordinates bring problems to her desk and her superiors issue new directives. . . . *Wall Street Journal*, June 27, 1984, at 23, col. 3.

State administrators also believe that Program changes lead to Program errors. As Congressman Thomas Foley, former chairperson of the House Agriculture Committee reported:

Ask your State administration, whatever party they belong to, what they think is causing error in the program. They will tell you that Congress is constantly changing the provisions of the act, which have to be implemented by new training manuals, have to be implemented by calling in of all the food stamp caseworkers, and have to be implemented through reprogramming of computers, is [sic] making it impossible for States trying to eliminate errors to be able to do so. 126 Cong. Rec. H3436 (daily ed. May 8, 1980) (statement of Rep. Foley).

In 1982 Senator Robert Dole continued to call for legislation to simplify Program administration.

. . . Because we are demanding that States reduce their error rates, we should assist them in their efforts by avoiding the addition of com-

plex, new program requirements, if at all possible.

Mr. President, there is little question in my mind that high error rates in the food stamp program are caused, at least in part, by the constant policy changes in the program. During the March 29, 1982, food stamp hearing in the Senate Agriculture Committee, Mr. Acel Martelle, the Nevada State Administrator called for a 1-year moratorium on all program changes, and his State's error rate is the lowest in the country at 3.65, so he speaks with some credibility. He stated:

"A program which is in a continuous state of flux has no stability, is extremely difficult, and costly to administer, is inherently error-prone as well as confusing to both the clients and the workers . . . it would be beneficial to put a moratorium on all program changes for at least one year." 128 Cong. Rec. S9915-16 (daily ed. Aug. 5, 1982) (statement of Senator Dole).

Senator Dole went on to read into the *Record* a letter from a state administrator to the Senate Agriculture Committee chairman Helms:

"Senator Helms, . . . . The food stamp program is suffering badly because of the constant program upheaval caused by the seemingly endless string of changes being produced in Washington. This can be most graphically illustrated by the food stamp quality control error rate in North Dakota, traditionally one of the lower error rates [sic] states. For the reporting period of October, 1980, through March, 1981, a time of relatively few and minor program changes, our combined error rate was 6.91 percent. For the April, 1981, through September, 1981 period, a time of nu-

merous and rapid program changes, our error rate increased dramatically, to 9.9 percent." *Id.* at 9916.

The confusion and complexity of the Food Stamp Program as perceived by those who administer it is added reason for the need to provide participants with meaningful notice of a reduction in their benefits. Administrators admit that errors are occurring. To ensure the accuracy of benefit determinations participants need meaningful notices of any changes in those benefits.

**3. The emphasis of state and federal monitoring systems is to guard against the overissuance of food stamp benefits.**

States are under a great deal of pressure to ensure that food stamp participants do not receive *more* food stamp benefits than they are entitled to receive. This pressure is in the form of financial penalties imposed on states with high overissuance error rates. States whose overissuance errors exceed the statutorily set tolerance levels have their state agency's federally funded share of administrative costs reduced pursuant to a formula provided for in the Act. 7 U.S.C. §2025(d)(2) and (3).

In 1982 Congress established specific error rate tolerance levels. Pub. L. No. 97-253, §180, 96 Stat. 782 (1982). At that time 10.6 percent of all food stamp cases were issued more benefits than they were entitled to receive. That amounted to approximately a \$1 billion loss to the federal government. S. Rep. No. 504, 97th Cong., 2d Sess. 140, *reprinted in* 1982 U.S. Code Cong. & Ad. News, 1777. Congress viewed the 1982 error rate legislation as a means "to achieve significant savings without necessitating any benefit reductions in order to slow the growth of pro-

gram expenditures." *Id.* Indeed, of all the 1982 Food Stamp Act amendments the error rate sanction provisions resulted in the largest amount of program savings.

The 1982 law requires states to achieve a maximum overissuance error rate of 7 percent in fiscal year 1984 and a 5 percent error rate in fiscal year 1985. 7 U.S.C. §2025 (d)(2)(A). In determining the amount of the fiscal penalty, the statute provides that states will be given credit if they have lowered their error rate from the previous year even though they do not reach the tolerance level for the current fiscal year. 7 U.S.C. §2025(d)(2)(B) and (d)(3).

Unlike overissuance errors, states are not penalized for underissuance errors, including errors resulting from incorrect denials and terminations. Instead, the Act provides that states may seek an increased share of administrative funding if their overissuance, underissuance, and negative error rates (that is, cases where benefits have been denied or terminated) are below levels set in the Act. 7 U.S.C. §2025(c).

Overissuances and errors resulting in a loss or denial of benefits are measured in the Food Stamp Program through the quality control review process. Pursuant to regulatory procedures, states must review a statistically valid sample of active and negative cases to assess the accuracy of the benefit determinations. An active case is one where the household was certified prior to or during the sample month and received food stamp benefits for the sample month. A negative case is one where the household was denied food stamp benefits or where the household's benefits were terminated for the sample month.

The United States Department of Agriculture, through its Food and Nutrition Service (FNS), monitors the states'

performance. The attention Congress has given to overissuance errors is reflected in the system the Department of Agriculture has established for monitoring the states' quality control system. FNS often does not even review a state's reported error rate for cases which were denied or terminated (that is, the negative error rate). An FNS review of a subsample of negative cases occurs only when the state agency appears to be entitled to an increased share of federal administrative funding for having low error rates.<sup>9</sup> 49 Fed. Reg. 6303 (1984) to be codified at 7 C.F.R. §275.3(c). Moreover, the federal review of a subsample of negative cases involves only a review of the case record. 49 Fed. Reg. 6304 (1984) to be codified at 7 C.F.R. §275.3(c)(4)(ii). The household which was denied or terminated benefits is not interviewed to ascertain the accuracy of the information in the case record.

Underissuance error rates are subject to federal review as part of FNS' review of the states' active case error rate. 49 Fed. Reg. 6303 (1984) to be codified at 7 C.F.R. §275.3(c). The federal monitoring agency again reviews a subsample of a state agency's completed active cases. However, the federal agency's review of the state's active case error rate may again consist of only a review of the case record as opposed to a field investigation. 49 Fed. Reg. 6303 (1984) to be codified at 7 C.F.R. §275.3

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<sup>9</sup>For the last quality control reporting period for which data is available (October, 1981 - March, 1982), the Department of Agriculture reports that only seven states received enhanced administrative funding for having low error rates. (Massachusetts was not one of these states.) Accordingly, the negative error rates for all other states were not subject to the Department's review. Telephone interview with Karen Pico, Program Accountability Division, U.S. Department of Agriculture, Food and Nutrition Service (August 2, 1984).



(c)(1)(ii). In reviewing active cases, a state's quality control reviewer conducts field investigations. These field investigations include interviews with the household and interviews with persons outside the household who can verify household circumstances. Neighbors and employers may be interviewed as part of the field investigation and bank, employment, school and public benefits records may be obtained and reviewed. 49 Fed. Reg. 6307 (1984) to be codified at 7 C.F.R. §275.12(c).

The above quality control field investigations typically take twelve hours, compared to the sixty minutes used by a caseworker to determine the household's initial eligibility. H.R. Rep. No. 464, 95th Cong., 1st Sess. 355, *reprinted in* 1977 U.S. Code Cong. & Ad. News 2287. Nonetheless, a case record review assumes that the information in the case record is accurate.

Consequently, the focus of the sanction and review system is one-sided. The sanction system conceptually is designed to force states to concentrate exclusively upon being certain not to overpay benefits or to provide them to ineligible households. Since states suffer no fiscal penalty for underissuances and improper denials and terminations, the focus is on avoiding incorrect expenditures of Program funds not on avoiding incorrect nonexpenditures.

While Food Stamp Program administrators are the main defensive mechanism to prevent overissuances, Food Stamp Program participants must rely on themselves to prevent underissuances.<sup>10</sup> Participants can only monitor

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<sup>10</sup>At the same time participants assume some responsibility to guard against overissuances. Households may have coupon allotments reduced to recover overissuances caused by an inadvertent household

(continued)

their receipt of Program benefits if they are given sufficient information to ascertain the accuracy of their benefits. This information becomes critical when a change occurs in their benefit level. It is not sufficient to receive information that benefits are being reduced because of a change in the "earned income deduction from 20 to 18 percent." That information is meaningless unless they are also given the data used to determine their new benefit level and are shown how the benefit computations were made. A quality control reviewer could not assess the accuracy of a case if the only information the reviewer is given is the old and new benefit level plus the reason for the change.<sup>11</sup> Similarly, a household cannot assess the accuracy of their case with sketchy, incomplete information. At the very least, so that the household may conduct their own quality control review when changes in their food stamp benefits occur, they must receive an understandable, unambiguous notice containing an explanation of the reason for the change and the specific case information used to effectuate the change. Because the error rate sanction system operates primarily to guard against overissuances, informative notices must be provided to Food Stamp Program participants to protect them against underissuances.

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*(footnote continued)*

error. 7 C.F.R. §273.18(d)(4). However, errors caused by the food stamp office cannot be collected through allotment reduction. *Id.* In Massachusetts for the most recent reporting period, 39% of all errors were caused by the food stamp office. Form FNS-274-2, "Distribution of Variance by Type of Agency and Participant Error," Massachusetts, October, 1981 - March, 1982.

<sup>11</sup>This is what Massachusetts now provides. The notice at issue in the current case of course did not provide *any* benefit information.



## CONCLUSION

For the foregoing reasons, the amicus curiae requests the Court to affirm the judgment below that the Commonwealth's notice of the reduction in the earned income disregard was inadequate.

Respectfully submitted,

Cynthia G. Schneider  
Food Research and Action  
Center, Inc.  
1319 F Street, N.W.  
Suite 500  
Washington, DC 20004  
*Attorney for the Amicus Curiae*

August 31, 1984

